

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **06-MSRC-021**

PAUL B. HOLBROOK

PETITIONER

FINAL ORDER

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

RESPONDENT

* * * * *

This matter came before the Commission at the hearing scheduled for September 14, 2006. The Petitioner was present appearing pro se and the Respondent was present and represented by counsel. At the call of the hearing the Petitioner stated that he wished to resolve the matters in controversy by agreement.

Thereafter the Parties made a Joint Motion to enter an Agreed Order to settle by agreement the matters in controversy between the Respondent, Office of Mine Safety and Licensing (OMSL) and Petitioner. This motion was made during the meeting of the Commission with the terms of said agreed Order stated on the record and before the members of the Commission regarding the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to enter an Agreed Order is **GRANTED**.

2. The Commission Orders the following agreed terms as material parts of this **FINAL ORDER**.
3. Holbrook shall comply with the terms of KRS 351.120(13) to achieve restoration of his certificate by the Kentucky Mining Board and appear in person at a meeting of that Board.
4. If the Kentucky Mining Board restores Holbrook's certificates, said certificates shall be on **probation** for a period of one (1) year after reinstatement.
5. Holbrook shall submit to a **drug test every sixty (60) days**, at his own expense, the results of which shall be submitted to the appropriate OMSL district office during the suspension and probationary periods. This testing is in addition to not in lieu of any other testing by his employer. Any positive test indicating alcohol, substance or drug abuse by any authority may result in OMSL filing a motion with the Mine Safety Review Commission to revoke that Respondent's miner's certificates.
6. During his period of probation Petitioner shall be required to comply with all state and federal mine safety laws and regulations and that violation of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke that Respondent's miner's certificates for the remainder of the probationary period.

7. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Petitioner not arising from the factual basis of the original violation and resolved herein.
8. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Petitioner, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13)
9. This Final Order represents a final disposition of all issues between the Petitioner and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
10. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is

requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

This **FINAL ORDER** is entered this, the 14TH day of September 2006.

A handwritten signature in black ink, appearing to read "Denise", written over a horizontal line.

DENISE MOORE DAVIDSON, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

Mailed by regular mail, first class, postage pre-paid, and by certified mail, return receipt requested to the following on this the 15TH day of September 2006:

PAUL HOLBROOK
812 KENTUCKY ROUTE 1107
VAN LEAR, KY 41265

Petitioner

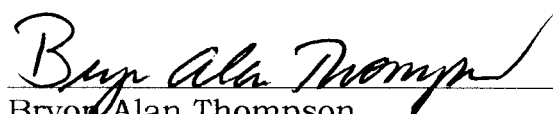
And by messenger mail to:

SUSAN C. BUSH, COMMISSIONER
DEPARTMENT FOR NATURAL RESOURCES,
#2 HUDSON HOLLOW,
FRANKFORT KY 40601

HON. C. MICHAEL HAINES,
GENERAL COUNSEL
OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ 564- 2356
FAX 502/ 564 - 9212

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601

A handwritten signature in black ink, reading "Bryan Alan Thompson", written over a horizontal line.

Bryan Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission